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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 430

VERNON C. LYONS,

Petitoner,

v.

CHICAGO PARK DISTRICT,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

VERNON C. LYONS prays that a writ of certiorari issued to review the decision of the Supreme Court of Illinois, in the above-entitled case, filed May 29, 1968.

REPORT OF THE OPINION OF THE COURT BELOW

The opinion of the Illinois Supreme Court is reported at 39 Ill.2d 584 and 237 N.E.2d 519. It is appended to this petition as Appendix A.

JURISDICTION

The judgment of the court below is dated and was entered on May 29, 1968.

The jurisdiction of this court is based on Section 1257, Title 28, United States Code, providing for appeal to this court where the constitutionality of a state statute is challenged and upheld by the highest appellate court of the state.

QUESTIONS PRESENTED

1. Is a provision of the Chicago Park District Code forbidding a person from scattering pamphlets in or upon the park system or on park property unconsitutional as violative of the right of a person to distribute a religious pamphlet under the First Amendment to the Constitution of the United States as made applicable to the State of Illinois through the Fourteenth Amendment?

2. If such an ordinance is constitutional, is it void and unconstitutional when applied to prohibit a person from distributing religious pamphlets under the First Amendment to the Constitution of the United States as made applicable to the State of Illinois through the Fourteenth Amendment?

CONSTITUTIONAL PROVISIONS AND ORDINANCE INVOLVED

United States Constitution, Amendment 1: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof: . ... or abridging the freedom of speech, or of the press;

United States Constitution, Amendment XIV, Section 1: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; . . .

Chicago Park District Code–Section 17-11 (Littering):

> "No person shall throw, cast, deposit, damage, lay, place or scatter in or upon the park system or any park property, or appurtenance any placard, handbill, pamphlet, circular, book, notice, paper of any kind, coal, ashes, dust, manure, rubbish, garbage, refuse matter or article, or thing of any kind.
>
> "Any person violating any of the provisions of this chapter, where no other penalty is specifically provided, shall be fined not less than five dollars nor more than two hundred dollars for each offense."

STATEMENT OF THE CASE

The petitioner, Rev. Vernon C. Lyons, pastor of the Ashburn Baptist Church in Chicago, was arrested June 24, 1966 and charged with a violation of Chapter 17–Use of the parks and boulevards of the Chicago Park District–Section 11, entitled in the margin "Littering" of the Code of the Chicago Park District. The petitioner, his children and other helpers were arrested for distributing excerpts from the "New Testament" within a parking lot of the Chicago Park District on a complaint signed by an employee. A judgment of guilty of "littering" was entered in the Municipal Court of Chicago, First Municipal District of the Circuit Court of Cook County, Illinois on the 7th day of October 1966.

At the opening of the trial, the counsel for the petitioner challenged the constitutionality of the ordinance under which petitioner was charged. Further, counsel for the petitioner moved to strike the ordinance as void on its face and unconstitutional. ~~(p. 81)~~ The trial court held that the ordinance was not unconstitutional ~~(p. 98)~~.

Following the verdict, the defendant at the post-trial motion hearing renewed the motion made at the close of the evidence which questioned the constitutionality of the ordinance. The argument was that the ordinance is so broadly written that it is unconstitutional and cannot be applied to prevent Pastor Lyons from distributing a religious

tract, a privilege accorded him under the religious and free speech clauses of the First Amendment, as made applicable to the State of Illinois by the Fourteenth Amendment (p. 193). A notice of appeal was filed in the Municipal Court of Chicago, November 25, 1966, reciting again that this ordinance is in violation of the First and Fourteenth Amendments of the Constitution of the United States.)

An Appeal from the Circuit Court of Cook County, Illinois, First Municipal District, was heard in the Supreme Court of Illinois in the May Term, 1967. The Supreme Court of Illinois held the ordinance in question constitutional as applied in the circumstance of the case. A motion to stay the mandate of the Supreme Court of Illinois was filed June 11, 1968 and allowed on June 19, 1968.

REASONS FOR GRANTING THE WRIT

The Supreme Court of the State of Illinois has decided in this case a federal question in a way, we believe, not in accord with the applicable decisions of this court. The applicability and scope of the First and Fourteenth Amendments to the United States Constitution guaranteeing the free exercise of religion and freedom of speech are directly involved and hence this case is one of great concern to the citizens of the United States.

The opinion of the Supreme Court of the State of Illinois from which this appeal is taken holds that the Chicago Park District may forbid a person from distributing a religious pamphlet at a public parking lot under their control, using an ordinance designed to prevent "littering." The langauge of the Illinois court is so broad in its sweep as to adversely affect the right of citizens to distribute religious and other pamphlets at parks and other public places.

This court in *Schneider v. State of New Jersey*, 308 U.S. 147, (1939), held that a similar section of the Municipal Code of the City of Los Angeles was void "as applied to the petitioners conduct . . ." (p. 165)

The ordinance herein involved provides: "17-11. No person shall throw . . . place or scatter in or upon the park system or any park property . . . any . . . pamphlet . . . or thing of any kind." In *Schneider* the code of the city of Los Angeles provided: "No person shall distribute any hand-bill to or among pedestrians along or upon any street, sidewalk or park . . . or throw, place, or attach any hand-bill into or upon any automobile or other vehicle." The state courts in both *Schneider* and this case upheld the ordinances prohibiting the distribution of the pamphlets. But this court overruled the Supreme Court of California in *Schneider* with language completely apposite to this case. It is imperative that in the interest of the right of free press and religious liberty that this court reaffirm the rule laid down so clearly in *Schneider.* Otherwise, the door will be open for those who would take away the rights of others to express their religious views in printed pamphlets by distributing them in public places on the flimsy excuse that "littering" might attend the distribution. Constitutional rights should not be so easily swept aside.

The petitioner here, motivated by deep religious conviction, undertook to distribute a religious pamphlet containing "The Acts of the Apostles" from the New Testament by placing a pamphlet under the windshield wipers and inside cars parked in a public parking lot of the Chicago Park District. He had no intention of throwing them away or scattering them, as to him they represent the word of God. He was told he could not distribute the pamphlets and he held out for his constitutional right to do so. His was the first arrest for "littering" in fourteen years of the particular parking area. The petitioner claimed his constitutional right to communicate God's word from the time of his arrest to the filing of this petition for writ of certiorari in this Supreme Court of the United States.

The ordinance involved may be justified as a means of keeping the parking area clean when applied to actual "littering." Everyone knows instinctively what is meant by "littering"—the discarding of paper plates, empty pop bot-

tles, candy wrappers and the like in public places. But here we find a dedicated pastor of the Baptist faith distributing a chapter of the Holy Bible to persons whose souls he cares enough about to save. He is then convicted of "littering" and told he can no longer "distribute" his pamphlets since some may fall by the wayside and have to be picked up. It is true that the public and the state have a need to keep their parks neat but they may not deprive persons of important religious freedoms to achieve such a pedestrian goal. This cause should be heard by this court to defend and maintain its clearly expressed guidelines for religious liberty.

This court in *Schneider v. State of New Jersey*, 308 U.S. 147, decided November 27, 1939 faced four similar situations, each presenting a question of whether municipal regulations having to do with the distribution of pamphlets did or did not abridge one's constitutional rights to freedom of speech and of the press. As we pointed out above the closest factual situation in *Schneider* was the one involving the Municipal Code of the City of Los Angeles. That Code provided:

> "No person shall distribute any hand-bill to or among pedestrians along or upon any street, sidewalk or park, or to passengers on any streetcar, or throw, place, or attach any hand-bill into or upon any automobile or other vehicle."

The California court "sustained the validity of the ordinance on the ground that experience shows littering of the streets results from the indiscriminate distribution of hand-bills." (pp. 155, 156). It further held that ". . . the right of free expression is not absolute but subject to reasonable regulation and that the ordinance does not transgress the bounds of reasonableness." (p. 156). Further in *Schneider*, an ordinance of the City of Milwaukee, Wisconsin provided:

> "It is hereby made unlawful for any person * * * to throw paper * * * or to circulate or distribute any circular, hand-bills * * * in or upon any sidewalk, street, * * * or other public place, park or ground within the City of Milwaukee." (p. 155)

Further this court pointed out:

> "The testimony was that the action of the officers accorded with a policy of the police department in enforcement of the ordinance to the effect that, when such distribution resulted in littering of the streets, the one who was the cause of the littering, that is, he who passed out the bills, was arrested rather than those who received them and afterwards threw them away." (p. 156)

The Wisconsin Supreme Court held:

> ". . . that the purpose of the ordinance was to prevent an unsightly, untidy, and offensive condition of the sidewalks."

Further in *Schneider*, an ordinance of the City of Worcester, Massachusetts, provided:

> "No person shall distribute in, or place upon any street or way, any placard, handbill, flyer, poster, advertisement or paper of any description."

The defendants in the Massachusetts action distributed in a street leaflets announcing a protest meeting in connection with the administration of State unemployment insurance. They did not throw any of the leaflets on the sidewalk or scatter them. Some of them to whom the leaflets were handed threw them on the sidewalk and the street, with the result that some thirty were lying about. (pp. 156-157) Again the state supreme court held the regulation valid. This court speaking through Justice Roberts reversed in each case and remanded the causes for further proceedings. The holding of this court can be clearly found in the following:

> "As we have pointed out, the public convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution. (p. 163)
>
> "We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to jus-

> tify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of freedom of speech and press. This constitutional protection does not deprive the city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets." (p. 162)

The reasoning and factual situations of three of the four cases involved in *Schneider* are so close to the factual situation and legal consequences here involved that it appears somewhat superfluous to keep repeating the excellent language of the decision in part when the whole decision is available for reading. Variations in facts are minor between the cases. The accident that we here have a parking lot of a park rather than a park itself is of no significance. No one suggests that the Rev. Vernon C. Lyons was throwing away or scattering chapters of a book sacred to him—the New Testament. He, his family, and friends were distributing copies of the "Acts of the Apostles" by placing the pamphlets under the windshield wipers of the cars, or in the cars themselves. Some were blown away by inadvertence, not by design. So as in *Schneider* it is important that this court hold that: ". . . the ordinance in question, as applied to the petitioners conduct, is void. . ." (p. 165)

The State of Illinois may, of course, by general and nondiscriminatory legislation regulate the times, the places, and the manner of distribution of pamphlets in its streets and parks. It may also outlaw the practice of littering. But no state, in the exercise of its housekeeping functions may invade the right of persons to distribute parts of the Bible as an act of religious devotion and dedication. The Corporation Counsel of the City of Chicago, the very office in which the prosecution of this case originated previously had no difficulty with the concept that ordinances designed to

deter objectionable practices such as littering may not be used to invade religious civil rights or the freedoms of speech and press. The attention of this court will be brought to the published opinions of the Corporation Counsel of the City of Chicago. Volume XVIII 4-15-1929 to 12-31-1935 (Opinion No. 7116) September 9, 1931 held invalid a city code which limited distribution of advertising matter. No. 8167 September 7, 1933 (p. 410) "Distribution Of Religious Tracts and Beliefs not prohibited by Ordinance."

Volume XX 1-1-1938 to 1-1-1940, No. 9885 September 14, 1938, pp. 222-5 held that handbills dealing with political economic and social views do not fall within the scope of the ordinance affecting distribution of handbills, distributed for advertising purposes. (p. 224). Volume XXI 1-1-40 to 1-1-1948 No. 10319 July 29, 1940 "Distribution of Non-Commercial Handbills in Public Ways" (pp. 195-7) cites the Supreme Court case of *Schneider v. State.* Also No. 10427 February 21, 1941, p. 198, Volume 23, 1949-1953 No. 11389 May 21, 1951 discusses "Handbills on Auto Windshields." The corporation counsel's office well knew how to handle the residual littering which was involved in the present case, what ordinances to rely upon, and how to avoid an unconstitutional, arbitrary and capricious invasion of the petitioner's rights.

Need we point out that an ordinance which would forbid the distribution of religious tracts in public parks and adjacent areas dedicated to the public would obviously be unconstitutional as a deprivation of the rights of freedom of the press and religion? Would not the act of an official in forbidding the same conduct on the ground that it violated a "littering" ordinance be equally unconstitutional? Both actions would deprive the religious person of his right to distribute his sacred message. There are proper regulations to deter the objectionable practice of littering and ordinances adequate to punish those who throw away their empty beer cans and candy wrappers on public property.

And there is no mystery as to how a park district can be diligent for clean parks without clearly involving itself in any deprivation of fundamental religious civil rights. In *Cantwell v. State of Connecticut* 310 U.S. 296 (1940) this court stated:

> "We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment . . . *In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom,* (pp. 303-304) (Emphasis supplied)

This court should clarify the law in this respect and reaffirm its opinion in *Schneider.*

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

FRANKLIN C. SALISBURY
Counsel for Petitioner

Docket No. 40523—Agenda 33—March, 1968.
CHICAGO PARK DISTRICT, Apellee, *vs.* VERNON C. LYONS, Appellant.

MR. JUSTICE UNDERWOOD delivered the opinion of the court:

Reverend Vernon Lyons of the Ashburn Baptist Church of Chicago was found guilty by a jury of violating section 17-11 (littering), chapter 17, of the Chicago Park District Code and fined $25. He appeals directly to this court alleging the ordinance to be violative of the first and fourteenth amendments to the United States constitution and sections 2 and 4 of article II of the constitution of Illinois.

Defendant admits that he, four of his own children, and two other members of his church, under his direction, were distributing small paper pamphlets containing the biblical book "The Acts of the Apostles" by placing them under the windshield wipers of cars, or upon the seats of cars with open windows, parked in the Chicago Park District's Monroe Street parking lot. The defendant apparently paid the parking-lot fee and drove into the lot solely for the purpose of distributing this literature. While the evidence is not precise on this point, the capacity of the parking lot is about 3,000 cars, and the implication of the testimony is that there were large numbers of cars parked there at the time the pamphlets were distributed. A fair summary of the balance of the testimony, which was largely undisputed, is that defendant was informed by the officers and assistant manager of the parking lot that he could not distribute his pamphlets in the lot as was being done, that he was free to leave without being arrested, and that he could stand on the sidewalk outside the lot entrance and pass the pamphlets to people as they entered or left the lot. At the time the officers talked to defendant in the lot, there were a number of pamphlets on the ground, apparently having been blown there from the cars. Wind velocity was about ten miles per hour with gusts up to twenty miles per hour.

Reverend Lyons refused to distribute the pamphlets outside the parking lot, insisting he was constitutionally privileged to circulate them as he was doing, and indicated his intention to continue. He was thereupon arrested. There was no hint of disorderly or ungentlemanly conduct by any of the participants or officers. Several days after defendant's arrest there were still pamphlets scattered about the parking lot. There is no direct testimony that either defendant or any of the church members actually deposited the pamphlets directly on the ground.

The challenged ordinance is as follows:

"LITTERING

"17-11. No person shall throw, cast, deposit, damage, lay, place or scatter in or upon the park system or any park property or appurtenance any placard, hand-bill, pamphlet, circular, book, notice, paper of any kind, coal, ashes, dust, manure, rubbish, garbage, refuse matter or article, or thing of any kind.

"Any person violating any of the provisions of this chapter, where no other penalty is specifically provided, shall be fined not less than five dollars nor more than two hundred dollars for each offense."

While defendant argues that section 17-11 is unconstitutional on its face, he cites no apposite authority supporting his position, and we think it clear that it is not. No case to which counsel refer, and none which our research has discovered, goes so far as to eliminate the right of public corporations to adopt reasonable regulations designed to maintain publicly owned property in an orderly condition. Conversely, the opinions of the United States Supreme Court and our court holding void various ordinances restricting the rights of free speech and free press expressly recognize the right of a municipality to regulate reasonably: "The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not

absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied." (*Hague v. C.I.O.*, 307 U.S. 496, 515-16, 83 L. Ed. 1423, 1437, 59 S. Ct. 954, 964.) "Prohibition of such conduct [throwing literature in the streets] would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion." (*Schneider v. State of New Jersey*, 308 U.S. 147, 161, 84 L. Ed. 155, 164, 60 S. Ct. 146, 150.) "Thus the [First] Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom." (*Cantwell v. State of Connecticut*, 310 U.S. 296, 303-4, 84 L. Ed. 1213, 1218, 60 S. Ct. 900, 903.) Similarly, our own decisions in *City of Blue Island v. Kozul*, 379 Ill. 511, 520, and *Village of South Holland v. Stein*, 373 Ill. 472, 478, recognize the right of municipal corporations to adopt regulatory provisions governing the use of public property to the extent that such regulations are compatible with constitutional guaranties of free speech and press.

The ordinance on its face is obviously intended to prevent littering of park district property—a clearly legitimate objective. It differs decisively from the ordinances held void in *Schneider*, *Cantwell*, *Hague*, *Lowell v. City of Griffin*, 303 U.S. 444, 89 L. Ed. 949, 58 S. Ct. 666, *Kozul* and *Stein*, the cases relied on by appellant, in that the terms of those municipal regulations either prohibited speech or the distribution of literature in public places, or required a prior permit to do so from a municipal officer, thereby effectively eliminating or substantially impairing

the freedoms of speech and press guaranteed by both State and Federal constitutions. Conversely, the ordinance before us does not purport to prohibit or in any way restrict the right to speak or to distribute written material directly to other persons, and we find no patent constitutional impediment to its enforcement.

We come then to the crux of this case: Are the first-amendment freedoms of speech and press contained in the Federal constitution and by the fourteenth amendment thereof made applicable to the States, and our State constitutional guarantee in section 4 of article II that "Every person may freely speak, write and publish on all subjects" impermissibly impaired by prohibiting defendant from placing religious pamphlets in and upon unoccupied vehicles, without the consent of their owners, in municipally owned and operated fee-parking lots?

Resolution of this question is not entirely free from difficulty, for free speech and a free press are fundamental personal rights and liberties thought by those who drafted our State and Federal constitutions to lie "at the foundation of free government by free men." "[T]he delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights." (*Schneider*, 308 U.S. at 161, 84 L.Ed. at 165, 60 S.Ct. at 151.) It is clear from the cases previously referred to and from the later opinions in *Marsh v. State of Alabama*, 326 U.S. 501, 90 L.Ed. 265, 66 S.Ct. 276; *Tucker v. State of Texas*, 326 U.S. 517, 90 L.Ed. 274, 66 S.Ct. 274; *Jamison v. State of Texas*, 318 U.S. 413, 87 L.Ed. 869, 63 S.Ct. 669; *Talley v. State of California*, 362 U.S. 60, 4 L.Ed. 2d 559, 80 S.Ct. 536; and *Louisiana ex rel. Gremillion v. N.A.A.C.P.*, 366 U.S. 293, 6 L.Ed. 2d 301, 81 S.Ct. 1333, that substantial impairment of the right to freely distribute ideas in written form is constitutionally intolerable, and that even mildly burdensome regulation thereof is seriously suspect. It is in this light that

the Park District ordinance and defendant's activities are to be viewed.

It is readily apparent that placement of pamphlets under the windshield wipers or in the seats of each automobile in a 3000-car parking lot may well result in additional burdens for those charged with responsibility for maintaining the lot in a clean and orderly condition, for it is likely that many, if not most, of such pamphlets will be discarded on the premises by the returning car owners. In fact, the evidence in this case indicates that there were substantial numbers of pamphlets about the parking-lot premises several days after defendant's arrest, apparently having been discarded by car owners or blown from the car windshields. It is further undisputed that there was an undetermined amount of such literature on the parking-lot surface at the time defendant was arrested although it is not clear as to whether these pamphlets had been dropped by the distributors, blown from the cars or discarded. It is further apparent that the presence of unsought and undesired pamphlets in or upon their cars will be a source of annoyance to numerous car owners, necessitating some action on their part in order to dispose of the unwanted literature. And, if defendant's actions are constitutionally immunized from proscription, other similar distributions will be similarly protected. The returning car owner may find himself the unhappy recipient of a windshield or seat full of unwelcome advertising or other material, to the receipt of which he gave no consent and of which he had no knowledge.

In our opinion adequate protection of the right of an individual to disseminate his ideas or philosophies to others does not necessitate subjecting park districts or the public to these inconveniences, annoyances and burdens. Defendant's right to station himself and his helpers on the sidewalk at or near the parking-lot entrance, and there distribute his literature to all willing recipients as they walked from or to the lot is unquestioned, and this action would have afforded him access to all persons reachable by the

methods he actually employed. The lot manager's testimony is undisputed that he urged defendant to do so and that defendant refused, giving as his only reason his belief that he was constitutionally privileged to do as he was doing. It seems manifest to us, however, that neither our own constitution nor the first amendment guarantees of the Federal constitution give individuals the unqualified right to speak or distribute their writings in any manner and at any time or place chosen by them without regard to the consequences to others. *Cameron v. Johnson*, 36 L.W. 4319.

Society generally and the inhabitants of any community have, it seems to us, a right to have publicly owned premises maintained in a sanitary and orderly condition. To that end municipal authorities may properly prohibit conduct thereon which violates that right unless the value to society of the proscribed conduct is deemed such as to outweigh the detriment to others resulting from such conduct. The right of an individual to freely speak, write and distribute his writing are among the most important values in our society, and have been zealously guarded by the courts since this country's founding, as noted earlier herein. But they are not absolute, and when alternative methods of distributing literature are available, each of which affords the individual substantially equal opportunities for communication with others, we believe municipal corporations may constitutionally restrict the distributor to the method not violative of the rights of others. We therefore hold the ordinance in question constitutional, as applied in the circumstances of this case, for its application neither proscribed nor impaired defendant's right to speak, write or distribute his writings. *Buxbom v. City of Riverside* (S.D. Calif.), 29 F. Supp. 3.

Defendant's other claims of error are susceptible to readier resolution. While it is contended that his petition for a change of venue was wrongfully denied, it is apparent that the petition was insufficient of its face to necessitate

transfer of the case from Cook County. It alleges in non-factual general terms "that the Court, Civil Administration and Jurors will be prejudiced against him", that "The Church Federation of Greater Chicago, the Roman Catholic Archdiocese of Chicago and Jewish Religious Organizations have formed a group or committee entitled 'The Chicago Conference on Religion and Race'" which has attempted to influence the mayor and others to implement a political, economic and social revolution, and has contributed to a breakdown of law and order; that neither defendant nor his church subscribe to this philosophy and petitioner requests transfer to a "jurisdiction wherein the Chicago Conference on Religion and Race has not intimidated and/or manipulated public officials." While verified by defendant's affidavit, the petition alleges conclusions rather than facts, is unsupported by other affidavits (see Ill. Rev. Stat. 1967, chap. 146, par. 4), it alleges no prejudice on the part of any specific judge, and is, in our judgment, manifestly insufficient to require either a change of judges or jurisdictions. We find no abuse of discretion in its denial. 92 C.J.S., sec. 171-c; *Gouker v. Board of Supervisors*, 37 Ill.2d 473.

We have examined the jury instructions as to which error is alleged to have been committed and find the trial court's rulings unexceptionable.

Defendant's final argument is that the court erred in permitting the plaintiff Park District to amend its complaint immediately prior to trial by adding the words "did or caused to be done" those things prohibited by the ordinance. While not entirely clear, the argument seems to be predicated upon the absence from the ordinance of the words added by the amendment, and it is contended that the court's action in effect rewrote the ordinance. This argument seems intertwined with the assertion that defendant could not be convicted in the absence of proof that he, personally, deposited pamphlets on the ground or other property owned by the District. Since defendant was

accountable whether he used an innocent agent to actually distribute the pamphlets or did so himself (*People v. Whitmer*, 369 Ill. 317, 320; see, also, Ill. Rev. Stat. 1967, chap. 38, par. 5-2(c),) and the evidence establishes he did both, the amendment was properly allowed, particularly since no claim of surprise was made and defendant specifically waived any claim to a continuance. Nor do we find merit in defendant's contention that the absence of proof that he or those acting under his supervision and direction actually threw or placed pamphlets on the ground or other Park District property prohibits his conviction. This argument apparently stems from the suggestion in *Schneider v. State of New Jersey*, 308 U.S. 147, 84 L. Ed. 155, 162 S. Ct. 146, 151, that responsibility under ordinary "littering" ordinances rested upon the recipient who tossed the literature to the ground rather than upon the distributor thereof. But that suggestion occurred in the context of person-to-person distribution and cannot, in our opinion, be thought applicable to the circumstances of this case. Here the pamphlets were placed upon inanimate objects—the windshields of automobiles—where they would remain for some hours exposed to such moving force as a 10-20 m.p.h. wind might generate. Under such conditions it seems to us clearly foreseeable that some pamphlets would be dislodged and blown to the ground. That this, in fact, did occur, or that pamphlets were dropped to the ground by defendant or some members of his group is, as previously noted, demonstrated by the testimony that a number of the pamphlets had reached the ground prior to defendant's arrest. In either event and regardless of the characterization of this proceeding as civil, quasi-criminal or criminal in nature, defendant is properly accountable for the known or expectable consequences of his acts or the acts of those directed by him. *People v. Johnson*, 2 Ill.2d 165, 172; *People v. Marrow*, 403 Ill. 69, 74; *United States v. Green* (7th cir.), 246 F.2d 155, 159, *cert.* den. 355 U.S. 871, 2 L. Ed. 2d 76, 78 S. Ct. 122.

The judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

[20] UNITED STATES OF AMERICA

State of Illinois } ss.
Supreme Court

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the thirteenth day of May in the year of our Lord, one thousand nine hundred and sixty-eight, within and for the State of Illinois.

PRESENT: ROY J. SOLFISBURG, JR., CHIEF JUSTICE
JUSTICE WALTER V. SCHAEFER
JUSTICE RAY I. KLINGBIEL
JUSTICE BYRON O. HOUSE
JUSTICE ROBERT C. UNDERWOOD
JUSTICE THOMAS E. KLUCZYNSKI
JUSTICE DANIEL P. WARD
WILLIAM G. CLARK, ATTORNEY GENERAL
ROBERT G. MILEY, MARSHAL

ATTEST: CLELL L. WOODS, CLERK

Be It Remembered, that, to-wit: on the 29th day of May 1968, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

Chicago Park District,
Appellee

No. 40523 vs.

Vernon C. Lyons,
Appellant

Appeal from
Circuit Court
Cook County
(Municipal Division)
66 MC 207838

Error to

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Circuit Court of Cook County (Municipal Division) aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

I, CLELL L. WOODS, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this day of , 19

Clerk,

A-11

State of Illinois
Office of
CLERK OF THE SUPREME COURT
Springfield
62706

CLELL L. WOODS
CLERK

June 19, 1968

Mr. S. T. Sutton
Attorney at Law
193 West First Street
Elmhurst, Illinois 60612

Dear Mr. Sutton:

In Supreme Court today, in case No. 40523 entitled:

Chicago Park District,
appellee

vs.

Vernon C. Lyons,
appellant

motion by appellant to stay mandate pending disposition of petition for writ of certiorari in the United States Supreme Court was allowed in part and the mandate stayed until further order of this Court.

Very truly yours,
/s/ Clell L. Woods
Clerk of the Supreme Court

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FILED
SEP 23 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 430

VERNON C. LYONS,

Petitioner,

vs.

CHICAGO PARK DISTRICT,

Respondent.

BRIEF IN OPPOSITION TO CERTIORARI.

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& MASTERS.

THE BLAKELY-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 430.

VERNON C. LYONS,

Petitioner,

vs.

CHICAGO PARK DISTRICT,

Respondent.

BRIEF IN OPPOSITION TO CERTIORARI.

COUNTERSTATEMENT OF THE CASE.

Petitioner seeks certiorari to review the unanimous decision of the Supreme Court of Illinois which affirmed petitioner's conviction for littering. In support of the petition, it is urged that the decision of the Illinois court is not in accord with this Court's decisions in *Schneider* v. *State*, 308 U. S. 147 (1939), and *Cantwell* v. *Connecticut*, 310 U. S. 296 (1940). It is respondent's position that, on the contrary, the City of Chicago and the Illinois courts have paid scrupulous attention to those controlling Supreme Court decisions and have correctly followed their teachings in the instant case. Therefore, the petition should be denied.

The relevant facts are undisputed. In the early afternoon of June 24, 1966, a police officer observed a number

of young children going in and out between the parked cars in the city's Monroe street parking lot and placing printed material on the windshields and front seats of the cars (27-31). Some of the papers were already lying on the ground, having been blown from where they had been placed (31). The parking lot in question is located an unobstructed block from Lake Michigan and on the afternoon of the incident, the wind was about ten miles per hour with gusts of fifteen to twenty (68-69).

Shortly after two of the children involved were apprehended for questioning, the petitioner, Reverend Vernon C. Lyons identified himself as the person directing the broadside scattering of printed material. He was advised by a police officer that the conduct in which the children were engaged and in which the petitioner later admitted that he was also engaged, was in violation of the law. Mr. Lyons refused to agree to halt his project insisting that because the documents involved contained a religious message, a copy of the Acts of the Apostles, his activity was constitutionally protected. Petitioner was advised that he was free to stand on the sidewalk and hand his printed message to passers-by and persons entering and leaving the parking lot (73). Rejecting this alternative, petitioner stood firm on his asserted right to persist in the distribution in the manner described and was arrested. Contrary to the assertion at page 3 of the Petition no one else was arrested.

After trial by a jury, petitioner was found guilty of "throwing, casting, depositing, laying, placing, or scattering" his pamphlets in or upon the park property in violation of Chapter 17, § 11, of the Code of the Chicago Park District. A fine of $25.00 was imposed.

REASONS FOR DENYING THE WRIT.

We submit that the controlling distinction between the case at bar and *Schneider* is the difference between scattering and hand-to-hand distribution. Here printed material was being deposited and scattered. The invitation to make a hand-to-hand distribution was rejected. In *Schneider*, hand-to-hand distribution had been unconstitutionally prohibited and penalized.

Petitioner's first contention is that the Chicago Park District's Littering Ordinance is void on its face. No case of this Court is cited as authority for that assertion and indeed, as the Illinois Supreme Court concluded, none exists. As petitioner himself notes at page 4: "This court in *Schneider* v. *State of New Jersey*, 308 U. S. 147 (1939), held that a similar section of the Municipal Code of the City of Los Angeles was void 'as applied to the petitioner's conduct . . .' (p. 165)."

Contrary to petitioner's conclusory assertions, the ordinance involved is adequately narrow to escape condemnation for overbreadth. What is prohibited is the throwing, placing, or scattering of papers, refuse and other objects in or upon the public parks. The ordinance reaches only so far as is reasonably necessary to prevent conduct which is unquestionably proscribable. The ordinance is not reasonably subject to any construction that would include, and thus discourage, constitutionally protected activity. The essence of the petitioner's claim is apparently that the ordinance is too broad because it includes religious tracts among those papers which cannot be scattered about in the parks. But obviously pages from a newspaper, a statute book or the bible are not distinguishable from hand bills or candy wrappers when thrown down and blown about in the public parks and ways. They are equally litter.

Petitioner's second allegation is that, as applied to him, the statute is void as violative of those critical rights guaranteed by the First and Fourteenth Amendments. As petitioner indicates, the leading case is *Schneider* v. *State, supra*. In that case, this Court held:

> We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. This constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets. 308 U. S. at 162.

In this, the core passage of the *Schneider* case, the Court clearly identified that conduct which is protected and which may be proscribed. Here petitioner rejected the opportunity of "handing literature to one willing to receive it" and insisted on a supposed right to deposit his material in such a way as to directly cause littering of the park. The Chicago Park District has never and does not now claim the right to punish petitioner for distributing his religious tracts to those "who are willing to receive them." The Chicago Park District has not attempted to intervene unreasonably between the petitioner and willing recipients of his message. *Cf. Martin* v. *Struthers*, 319 U. S. 141 (1943).

The immensely significant difference between the several enactments involved in *Schneider* and the ordinance in the instant case is that in *Schneider* any public distributions were ordained unlawful, whereas, the Chicago Park District ordinance seeks only to prohibit the depositing or

scattering of material. Petitioner is simply one of those punishable individuals who "actually throws papers on the streets" within the meaning of *Schneider*. Unless his conduct may be curtailed, the state is at an utter loss to prevent the spoilation by litter of its public facilities. Unless his conduct may be curtailed, anyone may deposit papers on park benches, ballustrades, telephone kiosks and other structures and objects in the parks with impunity. Unlike the situation in *Schneider*, if the state may not punish petitioner, who consigned pieces of paper to automobile windshields on a gusty day and who is therefore directly responsible for the ultimate mess, it may not punish anyone.

Defendant's unexplained citations to opinions of the Corporation Counsel of Chicago are totally beside the point. All of the cited opinions concern City of Chicago ordinances, not § 17-11 of the Code of the Chicago Park District. All of them deal with regulations that control hand-to-hand distribution of commercial and advertising matter. They do not purport to apply to the act of depositing any literature on streets or sidewalks. Chapter 17, § 11, of the Chicago Park District Code is part of a comprehensive statutory scheme for regulating the use and enjoyment of the parks and is wholly unrelated in both text and context to the ordinances on which the cited opinions are based.

CONCLUSION.

The petition* should be denied.

Respectfully submitted,

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Of Counsel:
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* We assume that by styling this proceeding a petition for a writ of certiorari, petitioner relies upon the Court's discretionary authority under 28 U. S. C. § 1257(3) to review a decision of a state court where the validity of a state statute has been called into question. Petitioner also has referred to his petition as an "appeal". Should the Court choose to treat this as an appeal, we request that this brief in opposition to certiorari be treated as a brief in support of a motion to dismiss the appeal as not involving a substantial federal question.